

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 66 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RATILAL MANILAL

Versus

PURSHOTTAMBHAI CHHINKUMAL CHIMLANI

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Appearance:

MR PV NANAVATI for Petitioner

MR GT DAYANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 21/03/97

ORAL JUDGEMENT

Learned Counsel Mr.P.V.Nanavati for the appellant -original defendant and learned Counsel Mr.G.T.Dayani for the respondent-original plaintiff have been heard. The appeal is admitted and the same has been taken up for final hearing.

The appellant happens to be the original defendant in Special Civil Suit No. 30 of 1996 pending on the file of the learned Civil Judge, Senior Division, Gandhinagar. The original plaintiff, Purshottambhai Chhinkumal, while filing the Suit, had also filed the necessary application at Exh.5. In this application at Exh.5, the plaintiff says in the very first paragraph that, the defendant happens to be the owner and the occupant of the land under dispute and that, the land is in his possession. When the prayer clause is referred to, it is apparent that, the plaintiff was asking for interim relief restraining the defendant therein who is the appellant before me, from transferring the land in any manner whatsoever, in favour of a third party or from transferring or parting with the possession of the land. This pleading with which the plaintiff has approached the Court below goes to show very clearly that, according to the plaintiff himself, the appellant-original defendant Ratilal Manilal was in actual physical possession of the land under dispute.

This application at Exh.5 has been dismissed and yet, there is no Appeal From Order against the said orders. Any how, along with the application at Exh.5, the application at Exh.24 submitted by the present appellant-original defendant came to be dismissed. The present Appeal arises out of the said orders.

The present appeal requires to be allowed, looking to the basics of the law of pleadings. The plaintiff has gone before the Court below with a specific case that the defendant who is the appellant before me is in actual physical possession of the land under dispute. Despite this clear-cut admission in the pleadings, when the appellant - defendant had moved the application at Exh.24, saying that the plaintiff therein should not interfere in his possession of the land, the said prayer has been turned down. This could not have been done regard being had to the elementary principle of law of pleadings. The original plaintiff has admitted the possession of the defendant in the pleadings themselves. Therefore, when the application at Exh.24 came to be submitted by the appellant - defendant saying that he should be protected qua the possession of the land in dispute, it was necessary under the law to grant such a protection to the appellant-defendant. The Court below, it appears that, has committed an error in rejecting the prayer of the appellant-defendant, coming under application at Exh.24. For this simple reason, the present Appeal From Order requires to be granted and the same is hereby allowed. The application at Exh.24 shall

also stand allowed, after I quash the orders upon the same. The net result would be that, when the application at Exh.24 stands allowed, it would prevent the respondent-original plaintiff from interfering in the actual physical possession of the appellant-plaintiff. The appeal succeeds to the above said extent and the same is hereby allowed. The orders under challenge shall stand quashed to the above said extent. There shall be no order as to costs.

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